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13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA

16 United States of America,  
17  
18 Plaintiff,

19 vs.

20 Richard Montijo,  
21  
22 Defendant.

No. CR 22-00318-PHX-DGC

UNITED STATES' SENTENCING  
MEMORANDUM AND RESPONSE TO  
PRESENTENCE REPORT

Sentencing Hearing: 8/16/2023

23 RICHARD MONTIJO ("Defendant") is before the Court for sentencing following  
24 his guilty plea to Count eighteen of the Indictment, Making a Material False Statement  
25 During the Purchase of a Firearm, Aid and Abet, a violation of 18 United States Code  
26 (U.S.C.), § 922(a)(6), 924(a)(2), and 2, a class C felony offense. The United States having  
27 reviewed its files and records in this case, the stipulations in the plea agreement (Doc.  
28 242.), and the Final Presentence Investigation Report (Doc. 325.) urge this Court to  
sentence the Defendant to 6 months in the Bureau of Prisons, followed by three years of  
supervised release, as it sufficient and not greater than necessary to meet the goals of  
sentencing.

PRESENTENCE REPORT

The government, having reviewed the Final Pretrial Investigation Report (PSR)(Doc. 325.) prepared by Senior U.S. Probation Officer Angela Daniel Leonard,

1 concurs with the recommendation, guideline calculation, and recitation of the offense  
2 conduct.

### 3 SENTENCING RECOMMENDATION

4 The Sentencing Guidelines are “the starting point and the initial benchmark” for  
5 sentencing. *Gall v. United States*, 552 U.S. 38, 49 (2007). After considering the advisory  
6 range, the “district court should then consider the § 3553(a) factors to decide if they support  
7 the sentence suggested by the parties.” *United States v. Carty*, 520 F.3d 984, 991 (9th Cir.  
8 2008)(en banc). Pursuant to 18 U.S.C. § 3553(a) factors, the Court shall impose a sentence  
9 sufficient, but not greater than necessary to comply with the following purposes:

10 (A) to reflect the seriousness of the offense, to promote respect for the law, and to  
11 provide just punishment for the offense;

12 (B) to afford adequate deterrence to criminal conduct;

13 (C) to protect the public from further crimes of the defendant; and

14 (D) to provide the defendant with needed educational or vocational training, medical  
15 care, or other correctional treatment in the most effective manner;

16 18 U.S.C. § 3553(a)(2).

17 The nature and circumstances of these offenses—Material False Statement During  
18 the Purchase of a Firearm—are serious. 18 U.S.C. § 3553(a)(1). The purpose of this statute  
19 is to prevent firearms from ending up in the hands of those who seek to use or possess them  
20 illegally. The firearms purchased by the Defendant were ultimately destined for Mexico.  
21 The trafficking of United States purchased firearms to Mexico is currently an epidemic that  
22 is fueling cartel and organized crime violence. Although these firearms were interdicted  
23 prior to being transported, this organization of traffickers have at least fourteen firearms  
24 recovered in Mexico to date.

25 The history and characteristics of this Defendant counsel in favor of a custodial  
26 sentence. U.S.C. § 3553(a)(1). The Defendant’s criminal history score underestimates this  
27 Defendant’s actual criminal activity and conduct. Defendant has been stopped on at least  
28 three separate occasions and caught transporting unlawful aliens in California. During

1 those contacts, the Defendant admitted to his participation in the alien smuggling and to  
2 doing it 10 additional times. Of note, the Defendant admits to being involved in alien  
3 smuggling due to Jesus Guerrero, a co-defendant, in this case. Defendant engaged in  
4 multiple illegal enterprises with his co-defendants. Defendant's present charges represent  
5 a small action in a much larger operation in which he played every role they needed.

6 The nature of Defendant's conduct counsels in favor of a sentence that will  
7 hopefully serve as an adequate deterrent against further criminal conduct by the Defendant.  
8 18 U.S.C. § 3553(a)(2)(B). Almost every defendant in this case participated to obtain  
9 financial compensation. Defendant's sentence should force a rejection of that mentality.  
10 Presently, the Defendant is unemployed and has again been testing positive for controlled  
11 substances. His criminal conduct and failure to get are all risk factors which suggest he will  
12 engage in this activity again. A six-month term of incarceration will deter the Defendant,  
13 and others, from lying and buying.

14 Although Defendant is opposed to the idea, he may need substance abuse treatment.  
15 18 U.S.C. § 3553(a)(2)(D). Upon initial placement on pretrial release, Defendant tested  
16 positive for Marijuana. Luckily, he was able to test negative until July 2023. He has  
17 admitted to the new Marijuana use but declines needing treatment. Should this drug activity  
18 persist, he would need intervention.

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1 In close, the seriousness of these offenses, Defendant's criminal conduct, the need  
2 to deter the Defendant from committing these offenses in the future, and his potential  
3 treatment needs, support a custodial sentence. For this reason, the United States  
4 recommends the Court sentenced the Defendant to six months in the Bureau of Prison  
5 followed by three years of concurrent supervised release.

6 Respectfully submitted this 10th day of August, 2023.

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8 GARY M. RESTAINO  
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10 s/Addison Santome

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of August, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Mark Health II  
*Attorney for Defendant*

s/Addison Santome  
U.S. Attorney's Office